

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Price Cap Performance Review)	CC Docket No. 94-1
for Local Exchange Carriers)	
)	
Treatment of Operator Services)	CC Docket No. 93-124
Under Price Cap Regulation)	
)	
Revisions to Price Cap Rules for)	CC Docket No. 93-197
AT&T)	

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REPLY COMMENTS
OF
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Summary

In its comments, Sprint recommended several changes to baseline price cap regulation: phased elimination of two major subsidy elements, the carrier common line charge (CCLC) and residual interconnection charge (RIC); implementation of zone density pricing, regardless of whether the LEC has operational expanded interconnection arrangements; application of zone density pricing to the local switching and CCLC rate elements; shortening the notice (but not comment) periods for new and restructured services; and expediting the Part 69 waiver process. These changes are economically rational, will help to eliminate regulation-induced incentives to use uneconomic sources of access, and will speed the introduction of new and restructured services. Several parties made similar recommendations or otherwise expressed support for the concepts underlying Sprint's recommendations. Sprint's recommendations should be implemented immediately, regardless of the extent of competition.

The RBOCs and USTA have proposed changes to baseline price cap regulation which are so far-reaching and would provide price cap LECs with such enormous pricing flexibility that they would in essence be able to price discriminate at will. This presents a serious threat to competition in both the access and interexchange markets, particularly if the RBOCs are allowed entry into the long distance market. Therefore, their proposals for excessive regulatory flexibility should be rejected.

Streamlined regulation might be warranted as barriers to entry are eliminated and competition develops in the interstate

access market. However, regulatory relief must be based upon satisfying criteria on a comprehensive "competitive checklist" and upon a showing of actual, facilities-based competition. The far looser preconditions for grant of streamlined regulatory treatment proposed by the RBOCs and USTA (an addressability showing) are unrealistic, will not foster the development of competition, and should not be adopted.

Finally, it is simply too early for the Commission to consider issues relating to nondominant regulation of price cap LECs. These issues can safely be deferred to a future proceeding.

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REPLY COMMENTS

Sprint Corporation, on behalf of Sprint Communications Company, L.P. and the Sprint Local Telephone Companies, hereby respectfully submits its reply to comments filed in the above-captioned proceedings filed December 11, 1995.

I. SPRINT'S PROPOSED CHANGES TO BASELINE PRICE CAP REGULATION ARE ECONOMICALLY RATIONAL AND PROVIDE LECs WITH SUFFICIENT PRICING FLEXIBILITY FOR THE NEXT SEVERAL YEARS.

In its comments, Sprint recommended three major changes to price cap regulation which should be implemented immediately, regardless of the degree of competition: phased elimination of two major subsidy elements, the carrier common line charge (CCLC) and residual interconnection charge (RIC); implementation of zone density pricing, regardless of whether the LEC has operational expanded interconnection arrangements; and application of zone density pricing to the local switching and CCLC rate elements. Sprint also suggested that the notice period (but not the window for submitting opposing petitions) for new and restructured service offerings be shortened, and that the Part 69 waiver process be expedited (e.g., by granting "me too" and unopposed waiver

requests promptly). Several other parties made similar recommendations, or emphasized the need for access reform.¹ As Sprint explained (pp. 7-14), its proposals will help to rationalize interstate access pricing; to eliminate regulation-induced incentives to utilize uneconomic sources of access (e.g., special rather than switched access); and to remove artificial pricing umbrellas which send incorrect signals about the viability of entry into the local services market. Sprint's recommended changes will enable LECs to move their interstate access rates towards cost, and, in conjunction with existing measures such as volume and term discounts and below-band filings (with appropriate cost support),² will provide LECs with sufficient pricing flexibility to make legitimate responses to whatever competitive pressures may exist for the next several years. At the same time, the changes proposed by Sprint will not give LECs the type of excess flexibility (or unreasonably obscure the visibility needed to assess LEC access offerings) that would permit and incite discriminatory and otherwise anticompetitive activities.

It is critical to the development and viability of competition in both the interexchange and local services markets that the Commission not grant dominant local exchange carriers undue

¹ See, e.g., USTA (p. 10), BellSouth (p. 31), Nynex (p. 24), Pacific (p. 27), SWB (p. 36), US West (p. 27), Comptel (p. 38) (supporting zone density pricing for other switched access rate elements); Comptel (p. 5), Ad Hoc (p. 28), AT&T (p. 6), MCI (p. 6), LDDS (p. 18) (emphasizing need to push access rates to cost and to remove subsidies from interstate access).

² As Sprint noted (p. 2), there is no evidence to suggest that lower SBI limits have acted as an impediment to cost-based rates.

regulatory flexibility. Several parties note that as the likelihood of RBOC entry into the interexchange market increases, the Commission must be extremely cautious that it not allow a situation in which the RBOCs have unfettered ability to provide interstate access at rates, terms and conditions which will provide discriminatory benefits to certain long distance carriers -- including in particular their own interexchange affiliates -- at the expense of other long distance carriers.³ Unless and until IXCs have viable sources of interexchange access other than the incumbent LEC, there will be no real market-based protection against unreasonably discriminatory or cross-subsidized access rates charged by the incumbents.

The RBOCs give, at best, passing recognition to the possibility that they may be allowed to enter the long distance market, and deny that their entry into this market would have a significant impact on their interstate access pricing and provisioning strategies.⁴ Pacific, astonishingly enough, states (pp. 36-37) that "[n]o one has ever described a lawful or even plausible mechanism that would enable BOCs to leverage their access facilities (even if they were 'essential') into other markets." It is difficult to imagine why Pacific would assume LEC access services are not essential (see Section II below for a brief discussion about the extent of access competition). Nonetheless, Sprint

³ See, e.g., Sprint, p. 4; MCI, p. 6; Comptel, p. 14; LDDS, p. 3.

⁴ Nynex, for example, states that "a LEC should not be considered dominant when it enters...a new service market, such as long distance" (p. 44).

would point out that contract tariffs and non-cost based volume discounts for access services which include criteria most readily satisfied by the RBOCs' own interexchange affiliates, are prime examples of mechanisms which could enable RBOCs to leverage their market power into an unreasonable advantage in the provision of long distance services.

II. THE RBOCs AND USTA HAVE FAILED TO DEMONSTRATE THAT THEIR PROPOSED CHANGES TO BASELINE PRICE CAP REGULATION ARE JUSTIFIED OR WARRANTED.

In their comments, the RBOCs and USTA recommend that they be granted virtually unlimited pricing flexibility as part of baseline price cap regulation reform. Thus, they urge that they be allowed to file contract tariffs in response to individual customers' requests for proposals (RFPs); to offer volume and term discount plans for switched access services; to file any new service or restructured service offerings on extremely short notice, and with little or no cost support; and that the Part 69 waiver process and the lower SBI limits be eliminated.⁵ They assert that these measures are economically rational and justified irrespective of the degree of competition; but that in any event, the market for interstate access services is vigorously competitive today.

The changes to baseline regulation proposed by the RBOCs and USTA are so far-reaching and would provide price cap LECs with such enormous pricing flexibility that they would in essence be

⁵ See Ameritech, pp. 4-22; Bell Atlantic, pp. 8-16; BellSouth, pp. 6-33; Nynex, pp. 14-32; Pacific, pp. 5-30; SWB, pp. 15-41; US West, pp. 5-36; USTA, pp. 15-38.

able to price discriminate at will. To compound the problem, the RBOC/USTA proposed changes would effectively eliminate any opportunity for meaningful review. Fourteen days (or fewer) notice is simply not sufficient time for interested parties to review tariff filings and prepare an objection (if necessary), and for the Commission to act on such objections, and lack of cost support (or cost support filed on a confidential basis) precludes analysis of the reasonableness of the proposed rates. Thus, the ability and opportunity to implement discriminatory or anticompetitive access offerings are substantially increased. As discussed above, to allow a dominant carrier to engage in individual customer pricing or non-cost-based volume discounts for standard access services is to invite unreasonable discrimination which could prove disastrous to the development of competition.

Sprint continues to believe that many of the concerns expressed by the RBOCs and USTA regarding the need to implement new and restructured services more rapidly are best addressed through reform, rather than evisceration, of existing price cap rules. Shortening the notice period (but not the comment period) for new and restructured services, and expediting the Part 69 waiver process to allow more rapid grant of unopposed and "me too" waiver requests,⁶ will allow price cap LECs to be more responsive to customer demands, yet will offer the Commission and other interested parties an adequate opportunity to assess the reasonableness of the LECs' access service offerings.

⁶ See Sprint, pp. 14-16 and p. 20.

The evidence provided by the RBOCs and USTA in support of their claim that the interstate access market is already vigorously competitive is anecdotal at best. It makes no sense to claim that CAPs pose an immediate competitive threat to a significant portion of the incumbent LEC's business, when in fact CAPs are able to provide only limited service (e.g., certain interoffice transport services) in extremely limited geographic locations (e.g., to one floor of one building in one wire center). Indeed, as Sprint pointed out in its comments (p. 25), despite a policy of giving as much of its access business to CAPs as is financially and operationally feasible, Nynex still receives \$.96 of every dollar Sprint pays for interstate access in what the Commission has found is one of the nation's most competitive access markets (LATA 132). Even in a high-density LATA like 132, it is not economically feasible for a CAP to interconnect in every LEC end office, and unless or until CAPs have ubiquitous loop facilities, IXCs will remain dependent on LECs for reaching the end users. Thus, the fact remains that CAPs currently have only a tiny market share and remain dependent on incumbent LECs for interconnection and resale of LEC access services.⁷

Whatever attempts to provide a broader picture of the extent of competition in the interstate access and local exchange markets were made are similarly unconvincing. For example, in support of its claim that the interstate access market is vigorously competitive today, USTA notes (p. 4) that 1995 total revenues for

⁷ See, e.g., Teleport, p. 2.

major CLECs (competitive local exchange carriers) are expected to exceed \$1.2 billion. However, it fails to mention that total 1994 revenues for the LEC industry were \$98.4 billion.⁸

Because available evidence supports the view that incumbent LECs currently retain market power, the Commission should reject the recommendations of the RBOCs and USTA that drastic reforms to baseline regulation be adopted. These proposed changes are excessive and unnecessary. Immediate implementation of the changes proposed by Sprint will, as noted above, provide price cap LECs with sufficient flexibility to meet whatever nascent competitive pressures may exist.

III. A COMPETITIVE CHECKLIST MUST BE SATISFIED BEFORE FURTHER REGULATORY RELIEF IS GRANTED.

As Sprint stated in its comments (p. 2), additional regulatory flexibility is warranted as barriers to entry are eliminated and as competition develops in the interstate access market. It therefore endorsed the Commission's proposal to predicate grant of relaxed regulatory treatment in part upon satisfaction of criteria on a "competitive checklist."⁹ Sprint and other parties proposed checklists of their own, covering issues such as franchise and entry requirements; interconnection and compensation arrangements; equal access to numbering resources; universal service and embedded subsidy reforms; and regulation of incum-

⁸ See USTA Statistics of Local Exchange Carriers 1995.

⁹ See Sprint, p. 22; see also, AT&T, p. 16; ALTS, p. 13.

bents and new market entrants.¹⁰ Several parties also correctly note that satisfying a checklist is a necessary but not sufficient condition for streamlined regulation of incumbent LECs. In addition to removing barriers to entry, evidence of actual, facilities-based competition must also be provided.¹¹ This is so because even apparent elimination of barriers to entry (e.g., in the access environment, implementation of expanded interconnection offerings) may be unworkable or irrelevant as a practical matter (e.g., if the expanded interconnection rates are so high that no party will find it financially feasible to subscribe to the interconnection service).

Although it would seem obvious that streamlined regulation of incumbent LECs is not warranted until barriers to entry are eliminated, several RBOCs nonetheless either oppose use of a competitive checklist as a tool for evaluating whether further regulatory relief is justified, or propose checklists which are incomplete and insufficient. Ameritech, for example, asserts (p. 31) that implementation of a system of interim local number portability is sufficient to satisfy any number portability criterion. This is clearly unacceptable. Because interim systems such as remote call forwarding have serious limitations and do

¹⁰ See, e.g., Sprint's "Essential Elements of Local Telephone Competition," attached to its comments; MCI, pp. 22-29; Teleport (Attachment 1); AT&T, pp. 6-7.

¹¹ See, e.g., Ad Hoc, p. 20; MCI, pp. 33-34; AT&T, p. 16; STV, pp. 8-10; Teleport, p. 2; GSA, p. 13.

not constitute true number portability,¹² implementation of an interim system in no way constitutes removal of the portability barrier.

Rather than relying upon a competitive checklist, the RBOCs propose much looser criteria to assess the potential for competition and to determine when streamlined regulation should be granted. At the furthest extreme, Bell Atlantic urges that streamlined regulation be granted when customers have one or more potential alternative service providers (p. 16); and Pacific urges that such regulation be granted when the LEC shows that a competitor has built a network in the wire center service area (p. 42). These proposals are so broad that the incumbent LEC would be subject to streamlined regulation if only one of its customers obtained a single access facility from a competitive service provider, even if that CAP relied upon the incumbent LEC in part for the underlying facility. This situation obviously does not constitute a competitive market, and it makes no sense to grant streamlined regulation under such conditions.

The other RBOCs and USTA propose that streamlined regulation of price cap LECs be based upon a relaxed analysis of supply and demand elasticities, and that market share information be disregarded. Ameritech (p. 24), Southwestern Bell (p. 11), US West (p. 38), and USTA (p. 51) all recommend that streamlined regulation be granted when competitive facilities are available to as

¹² See Sprint's comments dated September 12, 1995 and reply comments dated October 12, 1995 in CC Docket No. 95-116, Telephone Number Portability.

little as 25% of access traffic in a geographic market.¹³ Ameritech, BellSouth, SWB, and USTA all cite the Commission's analysis in adopting streamlined regulation for AT&T in support of their recommendations.

The danger of adopting an addressability criterion as the basis for granting streamlined regulation is apparent. There is no empirical evidence to support the notion that the existence of some as-yet undefined alternative facilities -- even if no access customer is actually using such facilities and even if the alternative service provider continues to rely upon LEC facilities -- will serve as an effective check against unreasonable rates, terms and conditions imposed by the incumbent LEC. While it is true that the Commission did rely upon an analysis of supply and demand elasticities in granting streamlined regulatory treatment for AT&T, this analysis was based upon the existence, for a several-year period, of two ubiquitous, facilities-based competitors to AT&T, numerous regional facilities-based competitors, and hundreds of reseller competitors. Moreover, AT&T did not control bottleneck facilities such as the LECs possess. And, while the Commission did not place great weight on market share considerations, it did note that AT&T had experienced major market share losses before it was granted additional regulatory flexibility. Indeed, even Nynex recognizes (p. 7) that the incumbent LEC

¹³ BellSouth also endorses the supply/demand elasticity analysis, but does not recommend a specific addressability figure.

should experience some market share loss before streamlined regulation is warranted.¹⁴

The Commission does not yet have in place the tools needed to evaluate the extent of competition in the interstate access market. Even if such tools were available today, it is difficult to know precisely what level of actual, demonstrable competition is sufficient to justify grant of streamlined regulatory treatment to price cap LECs. There is no way that Sprint or any other participant in this proceeding can, at the present time, recommend a market share loss figure which balances the interests of incumbent LECs, actual and potential CLECs, and access customers.¹⁵ There are simply too many unknowns at this point to suggest anything other than a completely arbitrary trigger point at which streamlined regulation should be granted. For example, as access subsidies (including the CCLC and RIC) are eliminated from interstate access rates, the distinction between switched and special access will become increasingly blurred, making stream-

¹⁴ Numerous other parties also stress the relevance of a market share test in considering whether streamlined regulation is warranted. See, e.g., AT&T, p. 17; MCI, pp. 33-34; ICG Access Services, p. 6; STV, p. 11; Teleport, p. 2; Ad Hoc, p. 32; Telecommunications Resellers Association, p. 20.

¹⁵ AT&T has recommended (p. 17) that the Commission adopt three criteria for determining whether a market may be effectively competitive: there are at least two alternative providers who are not dependent on the LEC for the facilities they use to provide service; the alternative providers are available to at least 75% of the subscribers in the relevant market; and at least 30% of subscribers in that market use such alternate facilities-based providers. The dramatic contrast between AT&T's recommendations, and those put forth by the RBOCs and USTA, point out the difficulty of attempting to adopt specific, quantified trigger points at the present time.

lined regulation on a switched/special access basis increasingly inappropriate. The possible development of new technologies such as PCS or cable telephony will similarly affect definition of the relevant market. Given unknowns such as these, Sprint suggests that the Commission defer consideration of specific trigger points, and focus its resources on implementing the Phase I reforms Sprint has proposed and ensuring that the criteria on a comprehensive competitive checklist are met. Once these criteria have been satisfied, and the market has had a reasonable period to adapt to the new environment, the Commission can then turn its attention to considering quantifiable measures of when the market is sufficiently competitive to justify streamlined regulation.

IV. ANY DISCUSSION OF NONDOMINANT REGULATION FOR INCUMBENT LECs IS PREMATURE AT THE PRESENT TIME.

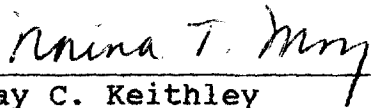
No party seriously suggests that nondominant regulation of incumbent LECs is warranted in the near term. The steps which must be taken before price cap LECs can be found to lack market power likely will take several years to complete. As Sprint and other parties emphasized, at this point it is fruitless to speculate on when "Phase III" may be reached, and impossible to identify what specific, measurable criteria should be adopted to define when this phase has been reached.¹⁶ The reforms suggested by Sprint to remove access subsidies and to expand the availability and scope of zone density pricing will provide sig-

¹⁶ See, e.g., Sprint, p. 28; Comptel, p. 38; AT&T, p. 55; MCI, p. 36; LDDS, p. 34; MFS, p. 9; STV, p. 10; GSA, p. 17.

nificant relief for the competitive pressures facing incumbent LECs, without presenting the troubling issues of discrimination and cross-subsidization which are raised under nondominant regulation. The Commission should therefore defer consideration of the issue of nondominant regulation of price cap LECs to a future proceeding.

Respectfully submitted,

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January 16, 1996

CERTIFICATE OF SERVICE

I, Joan A. Hesler, hereby certify that on this 16th day of January, 1996, a true copy of the REPLY COMMENTS OF SPRINT CORPORATION was served first class mail, postage prepaid, or hand delivered, upon each of the parties listed below.


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